



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,992	08/01/2003	Jeffrey R. Horacek	ST8631US	8982

22203 7590 12/14/2006

KUSNER & JAFFE
HIGHLAND PLACE SUITE 310
6151 WILSON MILLS ROAD
HIGHLAND HEIGHTS, OH 44143

EXAMINER

MCKANE, ELIZABETH L

ART UNIT PAPER NUMBER

1744

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,992

Applicant(s)

HORACEK ET AL.

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 13, 14 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-13, 15, 16 and 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 13, 14, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 14, the recitation of a “first” reagent absent the recitation of subsequent reagents renders the claim vague and indefinite as it is unclear if the claim requires more than one reagent.

In claim 13, line 4, it is unclear if the “first dry reagent” is the same or different from the “first” reagent of claim 1.

In claim 14, the introduction of the “cavity defined above said plate” in line 22 is confusing since a “cavity” is also recited in claim 25. Presumably these are separate elements. However, the use of the same term to describe both is confusing. The examiner suggests using a different term for the newly recited element. In addition, the indentation of the paragraph containing the second “cavity” is the same as all the other elements forming part of the chemical delivery device. The second “cavity” is not a part of the chemical delivery device. It is suggested to move the indentation of the paragraph over so as to be clear that the second “cavity” is party of the apparatus for microbially deactivating instruments and devices. Furthermore, in lines 27 and 29, recitation of “said device” is confusing as this term has been used to describe the

Art Unit: 1744

chemical delivery device and the devices deactivated by the apparatus. It is suggested to insert --chemical delivery-- before every instance it is used.

In claim 17, line 13, the recitation of a "first" reagent absent the recitation of subsequent reagents renders the claim vague and indefinite as it is unclear if the claim requires more than one reagent.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lehmkuhl (US 2,006,085)

Lehmkuhl teaches a chemical delivery device for holding reagents that interact with water to form an antimicrobial fluid. The delivery device of Lehmkuhl includes a rigid container 25 defining a fluid inlet that is sealably connectable to a source 37 of water and a fluid outlet 28, a continuous fluid passage through the container between the inlet and the outlet, a plate 36 disposed in the fluid passage having a plurality of spaced apertures formed therethrough (page 3, lines 11-14), a rigid lid disposed above the plate (see Figure), a dry reagent within the compartment for forming an antimicrobial solution when water flows through the container, and a cavity defined between the plate and the lid (see Figure). The reagent employed by Lehmkuhl

Art Unit: 1744

is a mixture of trisodium phosphate and sodium carbonate (page 1, lines 12-14), both of which are antimicrobials. Although Lehmkuhl discloses that the chemical reagent is in the form of “briquettes or lumps” (page 1, lines 27-28), it is not deemed inventive to provide the reagent in other known forms such as a powder and would have been obvious to one of ordinary skill in the art at the time of the invention.

Claim Objections

5. Claims 1, are objected to because of the following informalities: In claim 1, line 11 “barrier element” should be –barrier elements--. In line 20, “compartment” should be –compartments--. Appropriate correction is required.

Allowable Subject Matter

6. Claims 1-16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: Lehmkuhl fails to teach or suggest a plurality of spaced-apart barrier elements disposed within the fluid passage to define a plurality of isolated compartments within the container, each of the barrier elements being impervious to powdered reagents, but permeable to chemical reagents

Art Unit: 1744

when dissolved in a liquid. Furthermore, Lehmkuhl fails to teach or suggest a container having two compartments wherein one of the compartments holds an acid precursor.

Response to Arguments

9. Applicant's arguments with respect to claim 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leigh McKane
Primary Examiner
Art Unit 1744

elm
10 December 2006